In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 35, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF MAINE, NEW HAMPSHIRE, MASSACHUSETTS, RHODE ISLAND, NEW YORK, NEW JERSEY, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA AND FLORIDA

JOINT MOTION OF THE UNITED STATES AND THE STATE OF FLORIDA TO CONSOLIDATE PROCEEDINGS HEREIN AGAINST THE STATE OF FLORIDA WITH UNITED STATES v. STATE OF LOUISIANA, ET AL., NO. 9, ORIGINAL

The United States of America, by its Solicitor General, and the State of Florida, by its Attorney General, jointly move the Court to consolidate for all purposes these proceedings against the State of Florida with *United States* v. *State of Louisiana, et al.*, No. 9, Original, and that such further proceedings be had with respect to the State of Florida as may be ordered in said cause, pursuant to the jurisdiction retained by the Court therein under its decree of December 12, 1960, 364 U.S. 502, upon the condition that in No. 9, Original, the State of Florida will not present any evidence or make any argument with re-

spect to the rights of the British colonies under colonial grants or charters, or with respect to any claim that the States of the Union have purely constitutional rights of a proprietary character in the submerged lands or the natural resources of the bed of the sea adjacent to their coasts; but the State of Florida shall be entitled in No. 9, Original, to the benefit of any determination that the Court may make in No. 35, Original, with respect to those questions to the extent that such a determination may be relevant under the equal footing doctrine or otherwise applicable to the factual situation of the State of Florida. However, the State of Florida is not prohibited from approving of or submitting *amicus curiae* briefs in No. 35, Original.

This motion is made on the following grounds:

1. This case raises the question of the extent of Florida's submerged lands in the Atlantic Ocean.

2. The same question has been raised in the Amended Complaint in *United States* v. *Louisiana, et al.*, No. 9, Original, but in the view of the United States it was not considered by the Court in its opinion of May 31, 1960.

3. Simultaneously herewith there is being submitted to this Court, in *United States* v. *Louisiana, et al.*, No. 9, Original, a joint motion of the United States and the State of Florida to initiate supplemental proceedings; to consolidate therewith the proceedings in this case between the United States and Florida; to appoint a Special Master to hold hearings and make recommendations for a decree; and for entry of a decree defining the boundary between that area

of the seabed in which the State of Florida has rights to the natural resources and the area of the seabed in which the United States has such rights along the entire coast of Florida, in both the Gulf of Mexico and the Atlantic Ocean, not determined by this Court in its opinion in *United States* v. *Florida*, 363 U.S. 121 (1960), or its decree in *United States* v. *Louisiana, et al.*, No. 9, Original, 364 U.S. 502.

4. The cases raise common questions of law and fact.

5. The Special Master appointed in this case after hearing on the Motion for Severance of the State of Florida referred to him by this Court on November 16, 1970, has advised the parties that he is submitting a report recommending that the proceedings against Florida be severed from this case and be consolidated with proceedings against Florida in No. 9, Original.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General of the
United States.

ROBERT L. SHEVIN,
Attorney General of the
State of Florida.

Dated this day of MARCH 1971.

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MEMORANDUM IN SUPPORT OF MOTION

For completeness, the Amended Complaint in *United States* v. *Louisiana et al.*, No. 9, Original, put in issue the extent of Florida's submerged lands in the Atlantic Ocean as well as in the Gulf of Mexico; but the United States understanding has been that in its opinion of May 31, 1960, 363 U.S. 121, and decree of December 12, 1960, 364 U.S. 502, the Court dealt with Florida's limits only in the Gulf of Mexico. Recognizing that the issue of the extent of Florida's rights in the submerged lands off of its Atlantic coast was thus still before the Court pursuant to its retained jurisdiction in No. 9, Original, the United States nevertheless included Florida as a defendant in the present case, as to its claims in the Atlantic.

This was done in the belief that the issues affecting the rights of Florida on its Atlantic coast are so similar to the issues affecting the rights of the other Atlantic States as to make it desirable that all be considered together.

Florida then filed a motion for a severance in this case, which the Court submitted to the Special Master by order of November 16, 1970. At the hearing on that motion it appeared that Florida's claims in the Atlantic are not the same as those of the other defendant States, and that Florida does not intend to present any evidence or make any argument with respect to the rights of British colonies under colonial grants or charters, or with respect to any claim that States of the Union have purely constitutional rights of a proprietary character in the submerged lands or natural resources of the seabed adjacent to their coasts. The Special Master has advised the parties that he is submitting his recommendation that the proceedings against Florida in this cause be severed from those against the other Atlantic States, provided, however, that Florida shall nevertheless be entitled to the benefits of any determination that the Court may make as to other States in this cause with respect to those questions to the extent that such determination may be relevant under the equal footing doctrine or otherwise applicable to the factual situation of the State of Florida.

At the same time, circumstances have arisen making it necessary for the parties to move in No. 9, Original, to institute supplemental proceedings to define the limit of Florida's submerged lands in the Gulf of Mex-

ico with greater particularity than was done in the 1960 decision. A joint motion for that purpose is being filed simultaneously herewith. It thus appears that proceedings to define the limits of Florida's rights in the submerged lands of the Gulf and Atlantic will be proceeding simultaneously. As there are common questions of law and fact presented, both parties believe and, as the parties are advised, the Special Master is recommending that it will be more orderly and convenient to have the State of Florida's claims to the submerged lands in the Gulf and in the Atlantic determined in a single proceeding. This motion to consolidate the severed proceedings in the present case with the proceedings about to be initiated in No. 9, Original, is designed to accomplish that purpose.

The issues affecting Florida here include some that are similar in character to those affecting the other Atlantic States and those affecting Louisiana in the supplemental proceedings now pending before a Special Master in No. 9, Original. We assume that the Court will consider reference to a Special Master appropriate here for the same reasons that led it to make reference in those cases. We therefore have moved in No. 9, Original, that the consolidated proceedings as to Florida be referred either to the Honorable Albert B. Maris, whose position as Special Master in this cause has already introduced him to the subject, or to such other Special Master as the Court may designate. This reference should be made subject to the condition that Florida will not present evidence or argument with respect to the issues raised by other Atlantic States,

referred to above, namely, the rights of British colonies under colonial grants or charters, or the claim that States of the Union have purely constitutional rights of a proprietary character in the submerged lands or natural resources of the seabed adjacent to their coasts. It is understood that Florida shall nevertheless be entitled to the benefit of any determination that the Court may make in No. 35, Original, with respect to those questions, to the extent that such determination may be relevant under the equal footing doctrine or otherwise applicable to the factual situation of the State of Florida. Moreover, it is understood that Florida is not prohibited from approving or submitting *amicus curiae* briefs in No. 35, Original.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General of
the United States.

ROBERT L. SHEVIN,
Attorney General of
the State of Florida.

March 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971

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IN THE

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REPORT OF THE SPECIAL MASTER UPON MOTION OF THE STATE OF FLORIDA FOR SEVERANCE

March 29, 1971

ALBERT B. MARIS
Special Master

THE LEGAL INTELLIGENCER, 66 NORTH JUNIPER STREET, PHILA., PA. 19107

IN THE

Supreme Court of the United States

October Term, 1970 No. 35, Original

UNITED STATES OF AMERICA

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REPORT OF THE SPECIAL MASTER UPON MOTION OF THE STATE OF FLORIDA FOR SEVERANCE

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

Pursuant to the order of the Court entered November 16, 1970, 400 U.S. 914, your special master submits the following report with respect to the motion filed by the State of Florida on February 9, 1970 for a severance, which motion was referred to me by that order.

The complaint filed by the United States in this case alleges in effect that the United States is entitled, to the exclusion of the defendant states, to exercise sovereign rights over the seabed and subsoil underlying the Atlantic Ocean seaward from the three mile limit (within which

limit the United States had transferred its rights to the states by the Submerged Lands Act, 67 Stat. 29) to the limits of the continental shelf, for the purpose of exploring the area and exploiting its resources. The complaint asserts that the defendant states claim rights in the seabed and subsoil in question and that one of them, the State of Maine, has purported to grant exclusive oil and gas exploration and exploitation rights in a portion thereof. A separate cause of action is asserted against each defendant state and a declaratory decree and order for accounting are sought.

Each defendant state has filed an answer to the cause of action asserted against it. In the case of the 12 defendant states other than Florida, each answer sets up an affirmative defense to the effect that the state received from England, while it was a British colony (and, in the case of New York, also from Holland while it was a Dutch colony), certain rights in the portion of the seabed and subsoil in question adjacent to its Atlantic coast and that it did not lose these rights upon declaring its independence or give them up upon joining the federal Union, but continues to have them.

The affirmative defense set up by the State of Florida is entirely different from those of the other defendant states. That state asserts that by the Act of June 25, 1868, 15 Stat. 73, Congress approved the marine boundaries of the state, as set out in Article I of its Constitution of 1868, which boundaries, it asserts, run more than three miles seaward from its coast in part in the Atlantic Ocean, and that Congress thereby granted to Florida whatever interest the United States possessed in that maritime territory within those boundaries.

Following the order of reference of November 16, 1970, I held a hearing on the motion of the State of Florida for a severance. At the hearing counsel for that state asserted that its defense was based on its claim that the Act of 1868 had approved the marine boundaries claimed in its 1868 Constitution and that this approval constituted a

grant to the state of rights in the seabed and subsoil of the adjacent waters of the Atlantic Ocean within those boundaries or upon a construction of the Submerged Lands Act, 67 Stat. 29. Florida disclaimed any intention to claim any rights derived from England under colonial grants or charters or any purely constitutional rights of a proprietary character in its capacity as a state of the Union, except that if any such rights should hereafter be determined in this case to exist with respect to any of the other 12 defendant states, Florida would want to be entitled to the benefit of that determination to the extent relevant and applicable to its factual situation.

On the basis of the position of Florida as thus stated, it appeared to me that while there are undoubtedly questions of law and probably also of fact common to the causes of action of the United States against the 12 defendant states other than Florida which have been joined in this action, there are no questions of law or fact, except possibly with respect to the construction of the Submerged Lands Act, common to those 12 causes of action and the cause of action asserted against the State of Florida. I accordingly concluded that the cause of action against Florida was misjoined with the other 12 causes of action in this case and should be severed and proceeded with separately, as provided by Rule 21, F.R.C.P. Counsel for the United States agreed with this view. Accordingly, on January 14, 1971, I made an order as special master severing the cause of action against the State of Florida for hearing and determination. I was in doubt, however, as to my authority to order the cause to be proceeded with wholly separately, as Rule 21 contemplates. I, therefore, recommend that the Court itself order the cause of action against the State of Florida to be severed and proceeded with separately.

In the case of United States of America v. States of Louisiana, Texas, Mississippi, Alabama and Florida, No. 9, Original, the Court has determined that the State of Florida is entitled, as against the United States, to all the lands, minerals and other natural resources underlying

the Gulf of Mexico, within the historic boundaries described in its 1868 Constitution, extending seaward from its coast line for a distance not over three leagues, with the exceptions provided by section 5 of the Submerged Lands Act. 363 U.S. 121. In the decree entered with respect to the cause of action against Florida in that case on December 12, 1960, 364 U.S. 502, the Court reserved jurisdiction to entertain such further proceedings as may from time to time be deemed necessary or advisable to give proper force and effect to the decree. It appears that in the amended complaint filed by the United States against the State of Florida in that case an adjudication was also sought of the respective rights of the United States and the State of Florida in the seabed and subsoil underlying the ocean off the Atlantic coast of Florida, a question substantially the same as that raised in the cause of action of the United States against Florida in No. 35, Original, but it seems clear that this portion of the amended complaint was not adjudicated by the decree entered December 12, 1960.

Since the entry of the decree of December 12, 1960 in No. 9, Original, questions have arisen as to the location of the coast line of Florida, within the meaning of the decree, and especially as to where at various places on the Florida Gulf coast the line of demarcation should be drawn between the inland waters of that state and the high seas, which line of demarcation is to be regarded as the coast line for the purpose of demarcating the outer limits of the submerged lands in the Gulf of Mexico in which the State of Florida has rights under the decree of December 12, 1960. It appears, therefore, that supplementary proceedings in No. 9, Original, under the jurisdiction reserved in that decree will be required to adjudicate these questions.

It thus appears that the cause of action against Florida, in No. 35, Original, when severed should, in the interest of expedition and to avoid duplication of effort, be consolidated with the unadjudicated portion of the complaint against Florida in No. 9, Original, involving its

Atlantic coast, and any supplementary proceedings in that case with respect to the location of the shore line of the Gulf coast of Florida. For, as has been pointed out, the unadjudicated portion of the complaint in No. 9, Original, is substantially the same as the cause of action against Florida in No. 35, Original, while questions with respect to Florida's coast line and the outer limits of its inland waters on its Atlantic coast are likely to be raised in No. 35, Original, which will be similar in character and involve similar questions of law to those which will be raised in the supplementary proceedings in No. 9, Original.

Your special master is informed that counsel for both the United States and Florida have filed, or are about to file, with the Court joint motions in No. 35, Original, to consolidate for all purposes the cause of action against the State of Florida in that case with the further proceedings against Florida in No. 9, Original, and in No. 9, Original, to effect the same consolidation and to order supplemental proceedings with respect to Florida under the jurisdiction reserved by the Court in its decree of December 12, 1960. It appears to your special master that such consolidation and supplemental proceedings are appropriate and timely.

Your special master accordingly recommends that in case No. 35, Original, heretofore referred to him, an order be entered

(a) severing the cause of action asserted by the United States against the State of Florida for all purposes;

(b) consolidating that cause of action with the remaining proceedings with respect to Florida in the case of United States v. Louisiana, Texas, Mississippi, Alabama and Florida, No. 9, Original;

(c) and that such further proceedings be had in the consolidated cause with respect to the State of Florida as justice may require.

The order should be upon the condition that the State of Florida will not present any evidence or make any argument in the consolidated cause with respect to the rights

of the British colonies under colonial grants or charters, or with respect to any claim that the States of the Union have purely constitutional rights of a proprietary character in the submerged lands or the bed of the sea adjacent to their coasts; but the State of Florida should be entitled in the consolidated cause to the benefit of any determination that the Court may make in No. 35, Original, with respect to those questions to the extent that such a determination may be relevant and applicable to the factual situation of the State of Florida.

Respectfully submitted,

ALBERT B. MARIS
Special Master

March 29, 1971